IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.Rev.Pet.No. 3441 of 2007()

CRA.249/2005 of III ADDL.SESSIONS COURT, ERNAKULAM
CC.104/2001 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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REVN. PETITIONER: APPELLANT/ACCUSED:

T. MOHAMMED ASHRAF, S/O.HAJEE K.ASSAINAR
4-B, LINK HEIGHTS, PANAMBILLY NAGAR, ERNAKULAM.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:

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1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. GEORGE JOSEPH,
ELANJIKKAL HOUSE, AUTOMOBILE ROAD,
PALARIVATTOM, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3441 OF 2007

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Dated: 28-09-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.1041 of 2001 on the file of the Addl. Chief Judl. Magistrate, Ernakulam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner contended as follows:-

The complainant has not established that the statutory notice was sent within the statutory limit of 15 days from the date of receipt of dishonour intimation from the drawee bank. Eventhough Ext.P2 dishonour memo is dated 22-09-2000 the complainant would have it

that he received the same only on 15-10-2000. If this contention of the complainant is true, Ext.P3 statutory notice will be within time. To prove that Ext.P2 dishonor memo was received on 15-10-2000 the complainant examined the bank manager as P.W.2 who deposed before court that the dishonour of the cheque was intimated to the complainant only on 11-10-2000. But in support of the above stand, P.W.2 has relied on Ext.P5 true copy of the page of the delivery register. Ext.P5 is not a certified copy as contemplated by the Banker's Book Evidence Act, 1981. There is no certificate also attached to Ext.P5. Hence, it should not have been relied on by the courts below to hold that the dishonour intimation was received by the complainant only on 11-10-2000.

5. I am afraid that I cannot agree with the above submission. It is true that Ext. P5 photocopy of the delivery register does not contain the certificate as contemplated by Banker's Book Evidence Act. But then Ext.P5 is the Photostat copy of the relevant page of the delivery register and both below and above the relevant entry pertaining to Ext.P2 dishonour intimation, are similar entries relating to other transactions towards the middle of the page and there are over writings both above and below and also the signatures of the recipient of the letters. There is no reason why P.W.2 the bank manager should be disbelieved by the court when he says that dishonour intimation in this case was sent to the complainant only on 11-10-2000. The oral testimony of P.W.2 has been very credible and has been relied on by both the courts below. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of Rs. **1,00,000/- (Rupees one lakh only)** (giving credit to the sum of **Rs. 50,000/- (Rupees fifty thousand** only) deposited by the revision petitioner pursuant to orders of the lower appellate court and which amount shall be permitted to be withdrawn by the first respondent/complainant) within **five months** from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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